

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

APOTEX, INC. and BERNARD C. SHERMAN,

Plaintiffs,

Case Nos. 01-CV-0482
02-CV-1604

v.

HONORABLE AVERN COHN

EON LABS MANUFACTURING, INC.,

Defendant.

MEMORANDUM AND ORDER
AWARDING DEFENDANT ADDITIONAL ATTORNEY FEES AND EXPENSES

This is a patent case. On February 26, 2007, the Court in its Memorandum and Order Regarding Attorney Fees and Expenses awarded Eon \$3,104,959.20 in attorney fees and expenses for the reasons described and stated:

The Court will entertain a motion by Eon for an additional amount relating to attorney fees and expenses incurred subsequent to January 1, 2006 to bring their fees up to date

Now before the Court is Eon's Motion for An Award of All of Eon's Post-January 1, 2006 Litigation Expenses Under 25 U.S.C. §285 And The Court's Inherent Powers. The total amount requested is \$435,288.54, consisting of \$377,225.00 in attorney and paralegal fees and \$58,063.54 in expenses.

A summary of attorney and paralegal fees and expenses fees is attached as Exhibit A, and a summary of expenses is attached as Exhibit B. Eon has also filed in support of the motion a schedule displaying the billing range, total hours, and total fees for each time keeper, as well as multiple exhibits displaying in detail:

- Timekeeping information, billing information and summaries of attorney fees and expenses;
- invoices and payment;
- American Intellectual Property Law Association survey data;

Apotex opposes the motion on the grounds that:

- Eon is not entitled to an award of additional attorney fees and expenses primarily because the Court erred in the first instance of awarding it attorney fees and expenses;
- the amounts requested are excessive in that the attorney fees are unreasonable in the amount of \$130,227.00, and the expenses are unreasonable in the amount of \$1,324.00;

The Court sees no good reason to reconsider its initial decision awarding attorney fees and expenses to Eon as described in the Memorandum and Order of February 26, 2007 and will not discuss Apotex's argument that the Court erred. Moreover, Eon is clearly entitled to the attorney fees and expenses it incurred in seeking attorney fees in the first instance. See Yamanouchi Pharmaceutical Co., Ltd. v. Danbury Pharmacal, Inc., 51 F. Supp. 2d 302, 308 (S.D.N.Y. 1999).

As with the initial application, the data filed by Eon is voluminous and the data filed by Apotex in opposition is also voluminous. Also as with the initial application, the hours of attorney and paralegal work for which Eon seeks compensation and the hourly charges and expenses are not out of order. While the attorney and paralegal hours may seem somewhat high for an attorney fee application, Apotex's Stalingrad-like opposition to the application required additional hours of work. The Court made clear

early on in the application process of the likelihood of an award and the need for Apotex to be forthcoming. Apotex simply ignored the Court's statement and indeed even now persists in arguing it did nothing to warrant an attorney fee award against it.

Apotex requests that the Court to reduce the amount requested by Eon by \$131,601.00, or to \$246,958.00 in attorney's fees, and \$56,749.54 in expenses, for an aggregate of \$303,687.54. The Court declines to do so. Instead, the Court is satisfied that to assure a reasonable award to Eon, a ten percent (10%) reduction in the amount requested is appropriate.

Accordingly, a judgment will be entered in favor of Eon in the amount of \$391,759.69, representing attorney fees and expenses incurred by Eon post-January 1, 2006.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: May 14, 2007

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, May 14, 2007, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160